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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,950	03/25/2004	Edward O. Clapper	INT-22	6351
32509 7590 05/18/2007 CARRIE A. BOONE, P.C. 1110 NASA Parkway SUITE 450 HOUSTON, TX 77058			EXAMINER ULRICH, NICHOLAS S	
			ART UNIT 2173	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/808,950	<b>Applicant(s)</b> CLAPPER, EDWARD O.	
	<b>Examiner</b> Nicholas S. Ulrich	<b>Art Unit</b> 2173	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 1-27 are pending.

#### *Claim Objections*

2. Claim 1, 2, 5, 6, and 7 objected to because of the following informalities: Since there are two selectors in independent claim 1, the first selector should be noted as "a first selector". The following dependent claims should also reflect "first selector".

Appropriate correction is required.

#### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 11, 12, 17, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Shyu (US 7100068).

In regard to **claim 11**, Shyu discloses a performance control apparatus, comprising:

a selector for designating one of several settings in a processor-based system, wherein each setting is associated with one or more performance-related criteria of the processor-based system (*Column 2 lines 54-58: selector unit, with multiple adjustment stages*);

and a display comprising an indicator, wherein the indicator visually conveys a relative performance value for the processor-based system (*Column 3 lines 8-17*).

In regard to **claim 12**, Shyu discloses a first label and a second label, the first and second labels being disposed adjacent to the selector, wherein the first label designates a minimum setting of the selector and the second label designates a maximum setting of the selector (*Column 3 lines 28-37: The use of speed bars is used as a label to specify minimum and maximum values for the selector. When using the selector to increase a value, speedbars will be added up to 10, to indicate 10 is the maximum setting. Likewise, decreasing value will deduct speedbars, until the minimum setting of 1 bar is displayed. Therefore 1 bar labels minimum setting and 10 bars labels maximum setting*).

In regard to **claim 17**, Shyu discloses wherein the performance-related criteria comprise a processor clock rate and a fan speed (*Column 1 lines 54-57 and Column 3 lines 51-52*).

In regard to **claim 19**, Shyu discloses the performance-related criteria comprise disk drive usage (*Column 3 lines 11-16*).

4. Claims 1 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Cline et al. (US 5550970).

In regard to **claim 1**, Cline discloses a processor-based system, comprising:  
a performance control apparatus, comprising a selector, the selector being adjustable, between a minimum setting and a maximum setting (*Fig 3 element 320 and Column 4 lines 38-41*);

and a performance control application program with a graphical user interface, the graphical user interface comprising at least one application program selector associated with an application program loaded in the processor-based system, wherein the application program selector is adjustable between a second minimum setting and a second maximum setting (*Fig 3 elements 350, 352, and 354; Column 3 lines 48-52; and Column 4 lines 1-5: Each of the programs have there own selector shown in figure 3. The selectors can be dragged up or down to a max and minimum setting to allocate ram to the processes*).

wherein the at least one application program selector enables a user to modify one or more performance criteria during operation of the application program (*Column 3 lines 48-52: The selectors can be dragged up or down to a max and minimum setting to allocate ram to the processes*).

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and the selector enables the user to modify the one or more performance criteria during operation of the processor-based system (*Column 4 lines 38-41: User can add or subtract processes running in the system*).

In regard to **claim 21**, Cline discloses a performance control application program, to be run on a processor-based system, the performance control application program being viewable from a graphical user interface, the graphical user interface comprising:

a list of one or more software programs loaded into the processor-based system (*Fig 3 elements 350, 352, and 354*);

and a selector for altering a first performance-based characteristic of the processor-based system (*Column 5 line 64 to Column 6 line 5*);

wherein the first performance-based characteristic is altered while one software program of the one or more software programs is running on the processor-based system (*Column 5 line 64 to Column 6 line 15: Once adjusted, RAM is allocated as necessary*),

but is not altered when the one software program is not running (*Column 4 lines 38-41: Processes in the future*).

In regard to **claim 22**, Cline discloses a portion of the one or more software programs being collected as a group, wherein the first performance-based characteristic is altered when any software program in the group is running (*Fig 3 elements 350, 352, and 354; and Column 6 lines 6-15: The GUI displays a group of application currently*

*running on the system. By changing RAM allocation to one program in the group, changes the allocation of RAM to other programs in the group).*

In regard to **claim 23**, Cline discloses a second selector for altering a second performance-based characteristic, wherein the first selector is independent of the second selector (*Column 5 line 64 to Column 6 line 5: Disclosed is three selectors, each for specifying RAM allocation for a specific program*).

5. Claims 24, 25, 26, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Phoenix Technologies Ltd. (Phoenix PowerPanel 3.0).

In regard to **claim 24**, Phoenix Technologies Ltd. discloses a performance control application program, to be run on a processor-based system, the performance control application program being viewable from a graphical user interface, the graphical user interface comprising (*Pg 1 Convenient User Interface*):

a file type grouping, the file type grouping specifying a plurality of file extensions (*Pg 1 Power Panel and Context-Sensitive Power Management paragraph 2: For each type of activity (such as word processing or presentation) an associated Power Profile. The type of activity is defined by the file extension like a .doc for word processing or .ppt for presentation*);

and a configuration profile associated with the file type grouping, wherein the configuration profile specifies a set of performance criteria for the processor-based

system (*Pg 1 Power Panel and Context-Sensitive Power Management paragraph 2: For each type of activity (such as word processing or presentation) an associated Power Profile which controls power states of devices*);

wherein the processor-based system automatically sets the configuration profile when a file having one of the plurality of file extensions is run (*Pg 1 Power Panel and Context-Sensitive Power Management paragraph 3: PowerPanel automatically identifies and selects appropriate Power Profile*).

In regard to **claim 25**, Phoenix Technologies Ltd. discloses a second file type grouping, the file type grouping specifying a second plurality of file extensions, the second plurality of file extensions being distinct from the first plurality of file extensions; and a second configuration profile associated with the second file type grouping, wherein the second configuration profile specifies a second set of performance criteria for the processor-based system; wherein the second set of performance criteria is different than the set of performance criteria (*Pg 1 Power Panel and Context-Sensitive Power Management paragraph 2: For each type of activity a there is a Power Profile. Therefore there is a second grouping related to a second Power Profile that defines performance criteria for the second type of activity*).

In regard to **claim 26**, Phoenix Technologies Ltd. discloses wherein the set of performance criteria comprise adjusting the speed of one or more fans operating within



the processor-based system (*Pg 1 Power Panel and Context-Sensitive Power Management paragraph 2: also control system-wide power management settings*).

In regard to **claim 27**, Phoenix Technologies Ltd. discloses wherein the second set of performance criteria comprise adjusting a processor clock rate (*Pg 1 section Power Panel and Context-Sensitive Power Management paragraph 2: control system wide power management, for example, CPU clock*).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shyu (US 7100068 B2) in view of Cline et al. (US 5550970).

In regard to **claim 1**, Shyu discloses a performance control apparatus, comprising a selector, the selector being adjustable, between a minimum setting and a maximum setting (*Column 2 lines 54-58: a selector unit, with multiple adjustment stages*)

the selector enables the user to modify the one or more performance criteria during operation of the processor-based system (*Column 1 lines 54-58*) and a performance control application program with a graphical user interface (*Column 3 lines 7-17*)

Shyu fails to disclose the graphical user interface comprising at least one application program selector associated with an application program loaded in the processor-based system, wherein the application program selector is adjustable between a second minimum setting and a second maximum setting; wherein the at least one application program selector enables a user to modify one or more performance criteria during operation of the application program.

However, Cline discloses graphical user interface comprising at least one application program selector associated with an application program loaded in the processor-based system (*Fig 3 elements 350, 352, and 354; Column 3 lines 48-52; and Column 4 lines 1-5: Each of the programs have there own selector shown in figure 3. The selectors can be dragged up or down to a max and minimum setting to allocate ram to the processes*).

wherein the at least one application program selector enables a user to modify one or more performance criteria during operation of the application program (*Column 3 lines 48-52: The selectors can be dragged up or down to a max and minimum setting to allocate ram to the processes*).

Shyu and Cline are from the same field of endeavor of adjusting the performance of a processor based system. Therefore at the time of the invention, it would have been obvious to one skilled in the art to combine the teachings of Shyu and Cline in order to provide a user interface that defines performance criteria for applications existing on the processor based system.

Everyday computer users are becoming more skilled and demand more precision from their computer systems. To meet this demand, designers and programmers alike design user-friendly systems that allow users to modify performance settings. Some of the solutions have included hardware controls while others have included software controls. It is well known in the art that hardware and software can be combined to create diverse user-friendly systems. Therefore a skilled programmer in the art would be motivated to provide software control along with hardware controls for implementing performance settings of a processor based system. This would provide a more diverse interface that users can interact with.

In regard to **claim 2**, Shyu discloses wherein the one or more performance criteria of the processor-based system include processor clock rate and fan speed (*Column 1 lines 54-57 and Column 3 lines 51-52*).

In regard to **claim 3**, Shyu discloses the selector of the performance control apparatus further comprising first and second labels disposed at opposing ends of the

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selector, the first label indicating the minimum setting and the second label indicating the maximum setting (*Column 3 lines 28-37: The use of speed bars is used as a label to specify minimum and maximum values for the selector. When using the selector to increase a value, speedbars will be added up to 10, to indicate 10 is the maximum setting. Likewise, decreasing value will deduct speedbars, until the minimum setting of 1 bar is displayed. Therefore 1 bar labels minimum setting and 10 bars labels maximum setting*).

In regard to **claim 4**, Shyu discloses the performance control apparatus further comprising a display, the display having first and second indicators, wherein the first indicator conveys a processor temperature and the second indicator conveys a relative performance value of the processor-based system (*Column 3 lines 7-17*).

In regard to **claim 5**, Shyu discloses wherein the processor clock rate may exceed an optimum clock rate when the selector is adjusted beyond a predetermined setting, wherein the predetermined setting is not the maximum setting (*Column 3 lines 26- 35: Optimum clock rate is achieved in normal status, wherein the processor is run at its normal operational state. Therefore, when speeding up the processor past its normal status, it will exceed its optimal operational state*).

In regard to **claim 8**, Shyu discloses wherein the one or more performance criteria of the processor-based system include a processor clock rate and the

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application program selector enables the user to adjust and set the processor clock rate during execution of the application program (*Column 1 lines 54-57*).

7. Claims 13, 14, 15, 16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shyu (US 7100068 B2) in view of Sato (US 6627829 B2).

In regard to **claim 13 and 16**, Shyu fails to disclose further comprising a plurality of light-emitting diodes, the plurality of light-emitting diodes being disposed adjacent to the selector, wherein one or more of the plurality of light-emitting diodes changes to a first color when the selector is not at the minimum setting and wherein the light emitting diodes change to a second color.

However, Sato discloses a plurality of light-emitting diodes, the plurality of light-emitting diodes being disposed adjacent to the selector, wherein one or more of the plurality of light-emitting diodes changes to a first color when the selector is not at the minimum setting (*Abstract and Column 5 lines 1-15*) and changes to a second color (*Column 2 lines 40-47*).

Although Shyu does not disclose a plurality of led's adjacent the selector, Shyu does disclose an indicator to determine the setting of the selector (*Column 3 lines 28-37: The speedbar is used to show the selection of the selector*). Therefore, Shyu shows motivation towards Sato's invention for including an indicator to show selection of the selector. The use of a speedbar is merely a design choice by Shyu.

Therefore, at the time of the invention it would have been obvious to one skilled in the art to combine the teachings of Sato with Shyu's invention in order to provide led's that indicate the selection of the selector.

In regard to **claim 14**, Shyu discloses the performance-related criteria comprise a processor clock rate (*Column 1 lines 54-58*).

In regard to **claim 15**, Shyu discloses wherein the processor clock rate may exceed an optimum clock rate (*Column 3 lines 26- 35: Optimum clock rate is achieved in normal status, wherein the processor is run at its normal operational state. Therefore, when speeding up the processor past its normal status, it will exceed its optimal operational state*).

In regard to **claim 18**, Shyu discloses wherein the display further comprises a second indicator, wherein the second indicator visually conveys processor temperature (*Column 3 lines 10-17*).

8. Claim 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shyu (US 7100068 B2) in view of Cline et al. (US 5550970) in view of Sato (US 6627829 B2).

In regard to **claim 6 and 7**, Shyu and Cline fail to disclose wherein the selector further comprises a plurality of light-emitting diodes, wherein one or more of the plurality of diodes sequentially lights up when the selector is adjusted and wherein the light emitting diodes change color state when adjusted beyond a predetermined setting.

However, Sato discloses selector further comprises a plurality of light-emitting diodes, wherein one or more of the plurality of diodes sequentially lights up when the selector is adjusted (*Abstract and Column 5 lines 1-15*)

and wherein the light emitting diodes change color state when adjusted beyond a predetermined setting (*Column 2 lines 40-47*).

Although Shyu and Cline do not disclose a plurality of led's adjacent the selector, Shyu does disclose an indicator to determine the setting of the selector (*Column 3 lines 28-37: The speedbar is used to show the selection of the selector*). Therefore, Shyu shows motivation towards Sato's invention for including an indicator to show selection of the selector. The use of a speedbar is merely a design choice by Shyu.

Therefore, at the time of the invention it would have been obvious to one skilled in the art to combine the teachings of Sato with Shyu's invention in order to provide led's that indicate the selection of the selector.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shyu (US 7100068 B2) in view of Cline et al. (US 5550970) in view of Su (US 2005/0053492 A1).

In regard to **claim 9**, Shyu and Cline fail to disclose a second selector for controlling fan speed during execution of the application program.

However, Su discloses a selector for adjusting fan speed as needed (*Abstract*).

At the time of invention, it would have been obvious to one skilled in the art to combine the teachings of Shyu, Cline, and Su to provide a fan adjustment selector. The motivation to combine includes better cooling results and a quieter operation as discussed in the background section of Su patent application. Also Su discusses in the abstract how the invention can be used in any environment that needs a cooling fan.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cline et al. (US 5550970) in view of Phoenix Technologies Ltd. (Phoenix PowerPanel 3.0).

In regard to **claim 10**, Cline fails to disclose a performance control icon, accessible from the application program, wherein the user can modify one or more performance criteria.

However, Phoenix Technologies Ltd. discloses a performance control icon, accessible from the application program, wherein the user can modify one or more performance criteria (*Pg 1 section Convenient User Interface: described is a PowerPanel icon that allows the user to see current power state and also allows manual selection of power profiles*).

Cline and Phoenix technologies are from the same field of endeavor of application programs for changing computer performance settings. Therefore, at the



time of the invention, it would have been obvious to one skilled in the art, to combine the teachings of Cline and Phoenix Technologies, to include control icons for changing computer performance settings.

11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cline et al. (US 5550970) in view of Phoenix Technologies Ltd. (Phoenix PowerPanel 3.0) in view of Liu et al. (Us 2005/0030171 A1).

In regard to **claim 20**, Cline and Phoenix Technology Ltd. fail to explicitly disclose wherein performance-related criteria comprise processor speed and fan speed, the apparatus further comprising a second selector, wherein the selector controls the processor speed and the second selector controls the fan speed.

However, Liu discloses wherein performance-related criteria comprise processor speed and fan speed, the apparatus further comprising a second selector, wherein the selector controls the processor speed and the second selector controls the fan speed (*Fig 5 and 6; Paragraph 0069 lines 13-27; and Paragraph 0072 line 12: Liu discusses the use of a user interface with selectors for modifying fan speed of a system. Liu further suggests using identical user interfaces for controlling other aspects of the invention. Liu also discloses other aspects of the invention includes changing clock speed of the processor*).

Although Phoenix Technologies Ltd. does not explicitly disclose the limitations of claim 20, Phoenix Technologies Ltd. does however discuss the use of a PowerPanel icon to display a user interface for modifying power state devices and power profiles (*Pg 1 section Convenient User Interface*). Phoenix Technologies Ltd. does not go into detail about specific operations of the user interface but provides the motivation for a user interface that controls performance settings of a processor based system. Therefore at the time of invention, it would have been obvious to one skilled in the art to combine the teachings of Cline, Phoenix Technologies Ltd., and Liu to provide a user interface with selectors for controlling performance setting of a processor based system, particularly fan speed and processor clock speed.

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**Conclusion**

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas S. Ulrich whose telephone number is 571-270-1397. The examiner can normally be reached on M-TH 9:00 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca can be reached on 571-272-4048. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nicholas Ulrich

5/09/2007

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TADESSE HARLU  
PRIMARY EXAMINER